

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	No. CR19-238 RAJ
)	
Plaintiff,)	
)	ORDER GRANTING DEFENDANT'S
v.)	UNOPPOSED MOTION TO PROCEED
)	WITH GUILTY PLEA VIA
MICHAEL DAVID MATHISEN,)	VIDEOCONFERENCE
)	
Defendant.)	

This matter comes before the Court on Defendant Michael David Mathisen's unopposed motion to proceed with entry a guilty plea by videoconference. Dkt. 29. The Court has considered the motion and the files and pleadings herein, and for the reasons set forth below hereby **GRANTS** the motion.

I. PROCEDURAL HISTORY

Defendant is charged by Indictment in this matter with one count of Attempted Accesses with Intent to View Child Pornography. At his detention hearing on November 5, 2019, the Court denied the government's motion for detention and entered an appearance bond placing Defendant on home detention with location monitoring. He remains on bond. On June 16, 2020, the Court vacated the trial date in this matter due to the COVID-19 emergency.

The parties have reported they have reached a plea agreement. In-person plea hearings are not currently possible per the General Orders entered by Chief Judge Ricardo S. Martinez relating to closure of the courthouse. Pursuant to General Order 11-20, the courthouses in the Western District of Washington will not be open for such

1 proceedings until at least September 8, 2020. In light of this continued delay,
2 Defendant has brought a renewed motion seeking to conduct his plea hearing by
3 videoconference. Dkt. 29. The motion is styled as an unopposed motion, but is signed
4 by counsel for the government in the form of a stipulation.

5 **II. DISCUSSION**

6 Ordinarily, a defendant “must be present” for a change of plea hearing. Fed. R.
7 Civ. P. 43(a). Rule 43 provides for limited exceptions, including for some sentencing
8 proceedings, but none of the exceptions applies to a plea. Fed. R. Civ. P. 43(c).
9 Consequently, under ordinary circumstances, “the district court has no discretion to
10 conduct a guilty plea hearing by videoconference, even with the defendant’s
11 permission.” *United States v. Bethea*, 888 F.3d 864, 867 (7th Cir. 2018).

12 But these are not ordinary circumstances. Section 15002 of the Coronavirus
13 Aid, Relief, and Economic Security Act (“CARES Act”) empowers Chief District
14 Judges to authorize hearings by video or telephonic conference when: (1) such hearings
15 “cannot be conducted in person without seriously jeopardizing public health and
16 safety;” (2) “the district judge in a particular case finds for specific reasons that the plea
17 or sentencing in that case cannot be further delayed without serious harm to the
18 interests of justice;” and (3) upon “consent of the defendant . . . after consultation with
19 counsel.” CARES Act, Pub. L. 116-136 §§ 15002(b)(2), (4). The Chief Judge of this
20 Court has made such an authorization. General Order 04-20 (W.D. Wash. March 30,
21 2020), General Order 09-20 (W.D. Wash. June 25, 2020). Thus, a plea hearing may be
22 held by videoconference, but only upon a finding “for specific reasons that the plea . . .
23 cannot be further delayed without serious harm to the interests of justice.” CARES Act
24 §15002(b)(2)(a); General Order 04-20 at 3, General Order 09-20.

25 The defendant indicates he would like to take responsibility in this matter and
26 resolve it in a timely fashion. He argues this hearing cannot be delayed without serious
harm to the interests of justice in that further delay in scheduling sentencing, which
given the extended closure of the courthouse will take longer than usual due to the

1 backlog of cases on the Court's docket, will result in defendant's possible loss of
2 programming opportunities while in custody. Given the extended delay in reopening
3 the courthouse, the Court finds that delay of the plea hearing to a time when it can be
4 conducted in person presents a serious harm to the interests of justice in this matter.

5 **III. ORDER**

6 For the reasons set forth above, Defendant's motion does identify circumstances
7 that can support a finding of "serious harm to the interests of justice" as required by the
8 CARES Act and General Orders 04-20 and 09-20. Therefore, it is hereby **ORDERED**
9 that Defendant Mathison's motion to appear by videoconference for entry of a guilty
10 plea, Dkt. 29, is **GRANTED**.

11 The parties are directed to schedule a plea hearing to be held via
12 videoconference before the criminal-duty magistrate judge.

13 DATED this 2nd day of September, 2020.

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16 The Honorable Richard A. Jones
17 United States District Judge
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